

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
PAGING SYSTEMS, INC.)	FCC File No. 0001883916
)	
Petition to Deny filed by Warren C. Havens,)	
AMTS Consortium, Telesaurus-VPC, LLC, and)	
Telesaurus Holdings GB LLC)	

ORDER

Adopted: April 21, 2005

Released: April 22, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order*, we address a petition filed on November 22, 2004 by Warren C. Havens (Havens), AMTS Consortium, LLC (AMTS Consortium), Telesaurus-VPC, LLC (Telesaurus), and Telesaurus Holdings GB LLC (collectively, Petitioners) to deny the above-captioned long-form application filed by Paging Systems, Inc. (PSI) at the conclusion of the auction for Automated Maritime Telecommunications System (AMTS) licenses.¹ For the reasons set forth below, we deny the petition.

2. *Background.* In 1981, the Commission designated spectrum for AMTS operations, at the request of tug, towboat, and barge operators who complained that the existing ship-shore communications service was not adequate to meet their needs.² AMTS stations provide automated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.³ Under former Section 80.475(a) of the Commission's Rules, applicants proposing to serve portions of the U.S. coastline were required to define a "substantial navigational area," and show how the proposed system would provide continuity of service for the area.⁴ AMTS stations were required to be placed in operation

¹ Petition to Deny (filed Nov. 22, 2004) (Petition).

² See Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, GEN Docket No. 80-1, 84 F.C.C. 2d 875, 876 ¶ 2 (1981), *on recon.*, *Memorandum Opinion and Order*, 88 F.C.C. 2d 678 (1982), *aff'd sub nom.* WJG Tel. Co. v. FCC, 675 F.2d 386 (D.C. Cir. 1982). The Commission originally allocated spectrum for AMTS use on the Mississippi River, then expanded the authorized service area to the Gulf Intracoastal Waterway in 1982, the Gulf of Mexico in 1984, and nationwide in 1991. See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-372, 6 FCC Rcd 437 (1991) (*AMTS First Report and Order*); Amendment of Parts 2, 81 and 83 of the Rules to Add the Gulf of Mexico to the Authorized Service Areas of Maritime Mobile Systems Operating in the 216-220 MHz Band, *Report and Order*, GEN Docket No. 84-18, 56 Rad. Reg. 2d (P & F) 1613 (1984); Amendment of Parts 2, 81 and 83 of the Rules to Add the Gulf Intracoastal Waterway to the Authorized Service Area of Inland Waterways Communications Systems, *Report and Order*, GEN Docket No. 81-822, 51 Rad. Reg. 2d (P & F) 440 (1982).

³ *AMTS First Report and Order*, 6 FCC Rcd at 437 ¶ 3.

⁴ See 47 C.F.R. § 80.475(a) (2001).

within eight months of license grant, or, pursuant to former Section 80.49(a)(2) of the rules, “the authorization [would] become[] invalid and must be returned to the Commission for cancellation.”⁵

3. Between November 1996 and March 1998, PSI filed twenty-five applications to provide service on AMTS Channel Block B⁶ at various locations along the Great Lakes.⁷ In July 1998, the former Public Safety and Private Wireless Division⁸ concluded that twenty-two of the PSI applications proposed to provide continuity of service to substantial navigational areas,⁹ and those applications were granted under Call Signs KBP347, KSC779, and WDT539.¹⁰ Subsequently, one Petitioner (Havens) was authorized to operate on AMTS Channel Block B in various other locations throughout the United States.¹¹

4. In 2002, the Commission adopted a geographic licensing scheme for AMTS stations.¹² Accordingly, the Commission eliminated the service coverage requirements in Section 80.475(a), in order to permit AMTS geographic area licensees to place stations to serve marine vessels or units on land¹³ anywhere within their service area, so long as incumbent operations are protected and certain other requirements are met.¹⁴

5. On April 5, 2004, the Wireless Telecommunications Bureau (Bureau) announced that the auction of AMTS geographic area licenses would commence on September 15, 2004.¹⁵ In the public

⁵ See 47 C.F.R. § 80.49(a)(2) (1998).

⁶ Assignable AMTS frequencies are divided into two frequency groups, A and B, each with twenty channel pairs. Amendment of the Commission’s Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949, 17005 ¶ 111 (1997) (*Public Coast Second Report and Order*); see 47 C.F.R. § 80.385.

⁷ FCC File Nos. 850001-850019, 850438, 851651, 851652, 851852, 851853, 851855.

⁸ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

⁹ While the coverage requirement for coastlines specifically referred only to the Atlantic, Pacific, and Gulf of Mexico coastlines, it was interpreted to also include the Great Lakes. See Fred Daniel d/b/a Orion Telecom and Paging Systems, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 17474, 17477 ¶ 6 (WTB PSPWD 1998).

¹⁰ *Id.* at 17479 ¶¶ 11-13, 16-18. Applications for sites at Port Huron, Michigan (FCC File No. 850006), Washburn, Wisconsin (FCC File No. 850009), and Duluth, Minnesota (FCC File No. 850010) were denied because they would not provide continuity of service to a substantial navigational area.

¹¹ Specifically, Havens is the licensee of Stations WHV211, Las Vegas, Nevada; WHV257, Flagstaff, Arizona; WHV287, Phoenix, Arizona; WHV523, Salt Lake City, Utah; WHV653, Clinghouse, Nevada; and WPSQ413, Fort Collins, Colorado.

¹² See Amendment of the Commission’s Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6686 ¶ 2 (2002) (*Public Coast Fifth Report and Order*).

¹³ In 1997, the Commission adopted rules to permit AMTS public coast stations to provide commercial service to units on land, as well as maritime vessels. See *Public Coast Second Report and Order*, 12 FCC Rcd at 16965 ¶ 24; 47 C.F.R. § 80.123.

¹⁴ See *Public Coast Fifth Report and Order*, 17 FCC Rcd at 6702-03 ¶ 37, 6737.

¹⁵ Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004: Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, 19 FCC Rcd 6274 (WTB 2004).

notice setting forth the auction procedures, released May 26, 2004, the Bureau instructed potential bidders “to investigate and consider the extent to which AMTS frequencies are occupied by incumbents” when formulating their bidding strategies, and stated that potential applicants were “solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of” the geographic licenses being auctioned.¹⁶ The Bureau also cautioned potential bidders:

The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid.¹⁷

6. In order to revise the licensing database to delete facilities determined not to be properly constructed and operational, Commission staff did undertake a review of the AMTS licensing records.¹⁸ Specifically, the Bureau sent inquiry letters to the licensees of AMTS stations for which the construction information in the Commission’s records was missing or unclear. In response, PSI reported that it had not constructed certain stations authorized under its Great Lakes licenses.¹⁹ Consistent with the provisions of Section 80.49, the authorizations for those sites were deemed to be invalid, so Bureau staff deleted the unconstructed locations from the licensing database on July 22, 2004, shortly after the deadline for filing short-form applications for the auction, but nearly one month prior to the deadline for submission of upfront payments.²⁰

7. The AMTS auction was held on September 15, 2004.²¹ PSI was the high bidder for the Channel Block B license for the Great Lakes region; AMTS Consortium and Telesaurus were the high bidders for the Channel Block B licenses for the remainder of the continental United States.²² On

¹⁶ Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004: Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 19 FCC Rcd 9518, 9527 (WTB 2004) (*Procedures PN*); see also Automated Maritime Telecommunications System Spectrum Auction: 4 Qualified Bidders, *Public Notice*, 19 FCC Rcd 20452, 20456 (2004).

¹⁷ *Procedures PN*, 19 FCC Rcd at 9529-30.

¹⁸ *Id.* at 9529 n.54. The Bureau stated that it intended to complete the review prior to the commencement of the auction. See *id.*

¹⁹ See letter dated June 22, 2004 from Audrey Rasmussen to Tracy Simmons, Associate Chief, Public Safety and Critical Infrastructure Division.

²⁰ Short-form applications were due July 19, 2004, and upfront payments were due August 20, 2004. *Procedures PN*, 19 FCC Rcd at 9539, 9541. The short-form application is filed by an entity seeking eligibility to participate in the auction, and identifies the particular license(s) on which the applicant wishes to bid. See 47 C.F.R. § 1.2105.

²¹ Automated Maritime Telecommunications System Spectrum Auction Closes, *Public Notice*, 19 FCC Rcd 18252, 18252 (WTB 2004) (*Auction Closing PN*).

²² *Id.* at 18258. Specifically, AMTS Consortium was the high bidder for the Channel Block B licenses for the Northern Atlantic, Mid-Atlantic, Southern Atlantic, and Mountain regions (as well as the Alaska region); and Telesaurus was the high bidder for the Channel Block B licenses for the Mississippi River, Southern Pacific, and Northern Pacific regions.

September 27, 2004, PSI filed its long-form application,²³ which was accepted for filing on November 8, 2004.²⁴ On November 22, 2004, Petitioners filed a petition to deny the application.²⁵

8. On October 14, 2004, PSI filed petitions seeking to set aside the results of the auction, re-open the application process, and allow bidders to select additional markets in a newly instituted auction of the licenses available in the auction.²⁶ PSI argued that the auction was anticompetitive because the Commission permitted AMTS Consortium and Telesaurus to participate, notwithstanding that Havens controls both entities. The Bureau denied PSI's petitions on April 21, 2005.²⁷

9. *Discussion.* Petitioners make two primary arguments for the dismissal or denial of the PSI application. First, they argue that PSI, by seeking to set aside the auction results, already has effectively sought dismissal or denial of its application.²⁸ Second, they argue that, due to its failure to construct its authorized stations, PSI was required to return its Great Lakes authorizations to the Commission for cancellation, and that by not doing so it intentionally concealed the fact that the authorizations had terminated for failure to construct.²⁹ Petitioners state that the invalid incumbency information that PSI maintained in the Commission's licensing database caused them not to bid on the Channel Block B license for the Great Lakes region.³⁰ We find neither argument persuasive.

10. We will not construe PSI's October 14, 2004 petitions seeking to set aside the results of the auction as requests to dismiss or deny PSI's application. As we noted previously under similar circumstances, the Commission's rules do not allow an applicant to petition for denial of its own application.³¹ Moreover, while PSI sought reconsideration of the Commission's action permitting commonly-controlled entities to participate in the auction, PSI requests the processing of its application in the event that its arguments regarding the Petitioners' participation in the auction are not sustained.³²

11. We also reject Petitioners' contention that they were prevented from determining the true level of incumbency in the Great Lakes region until it was too late to modify their bidding strategies accordingly. Petitioners were solely responsible for exercising due diligence in investigating geographic

²³ The long-form application is submitted by the high bidder for a license after the bidding closes. See 47 C.F.R. § 1.2107.

²⁴ See Wireless Telecommunications Bureau Announces That Applications for Automated Maritime Telecommunications System Licenses Are Accepted for Filing, *Public Notice*, 19 FCC Rcd 22067, 22070 (WTB 2004). Petitions to deny were due November 22, 2004. *Id.* (citing 47 C.F.R. § 1.2108(b)).

²⁵ PSI filed an opposition. Opposition to Petition to Deny (filed Nov. 30, 2004) (Opposition). Petitioners filed a reply. Reply to Opposition to Petition to Deny (filed Dec. 7, 2004).

²⁶ Petition for Reconsideration (filed Oct. 14, 2004); Motion for Stay (filed Oct. 14, 2004).

²⁷ See Petition for Reconsideration and Motion for Stay of Paging Systems, Inc., *Order*, DA 05-1099 (WTB rel. Apr. 21, 2005).

²⁸ See Petition at 4-6.

²⁹ See *id.* at 7-12. Petitioners also challenge the validity of certain PSI site-based licenses in the Northern Atlantic region. See *id.* at 10 n.30. Given that one of the Petitioners was the high bidder for the Northern Atlantic region Block B license, see *Auction Closing PN*, 19 FCC Rcd at 18258, we conclude that this issue is not germane to the question of whether PSI's long-form application for the Great Lakes region should be denied.

³⁰ See Petition at 6, 12-13.

³¹ See Very High Frequency (VHF) Public Coast Spectrum in the 156-162 MHz Bands, *Memorandum Opinion and Order*, 14 FCC Rcd 8218, 8220 ¶ 6 (WTB PSPWD 1999) (citing 47 C.F.R. § 1.2108) (high bidder petitioned to deny all long-form applications; petition dismissed with respect to the petitioner's application).

³² See Opposition at 5.

licenses for which they considered bidding. The public notice setting forth the auction procedures specifically advised prospective bidders not to rely solely on the information in the Commission's licensing database, and to physically inspect stations authorized in service areas for which they might bid. In addition, Petitioners were on notice that the Bureau was conducting a review of the AMTS licensing information, and the results of that review were posted to the licensing database approximately one month before the deadline for submitting upfront payments (and nearly two months before the auction started). Thus, Petitioners could have submitted sufficient upfront payments to enable them to bid on the license for the Great Lakes region if the results of the Bureau's review made the license attractive. Consequently, we find no merit in Petitioners' argument that PSI's failure to construct certain site-based Great Lakes AMTS stations constitutes grounds to dismiss or deny PSI's long-form application for the Channel Block B license for the Great Lakes region.³³

12. For the aforementioned reasons, IT IS ORDERED that, pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and Section 1.2108 of the Commission's Rules, 47 C.F.R. § 1.2108, the petition to deny application FCC File No. 0001883916 IS DENIED, and the application SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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³³ Thus, in the context of the present petition to deny, we need not resolve the question of whether the licenses should be deemed to have terminated in their entirety.